

PT 97-59

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

GIFT MUSIC)	
MINISTRIES,)	
INCORPORATED,)	DOCKET: 93-16-1334
APPLICANT)	
)	
v.)	P.I.N.: 32-29-233-001
)	
)	
)	Real Estate Tax Exemption
)	for 1993 Assessment Year
)	
)	
STATE OF ILLINOIS,)	Alan I. Marcus,
DEPARTMENT of REVENUE)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. James T. Duda of Cummings and Duda appeared on behalf of Gift Music Ministries, Incorporated.

SYNOPSIS: The primary issue to be decided in this proceeding is whether real estate identified by Cook County Parcel Index Number 32-29-223-001 (hereinafter the "subject parcel" or the "subject property") should be exempt from 1993 real estate taxes pursuant to the "thrift shop" provisions contained in 35 ILCS 205/19.¹ which, in relevant part, state as follows:

¹. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption

All property of institutions of public charity, all property of beneficent and charitable organizations ... [is exempt from real estate taxation] ... when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit[.]

For purposes of this Section, beginning with the assessment year 1989, it is a charitable or beneficent purpose and not a use with a view to profit when (1) the owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and (2) all the income derived therefrom is used exclusively to support the charitable, religious or beneficent activities of the owner whether or not such activities occur on the premises of such property.

35 **ILCS** 205/19.7.

Also at issue in this proceeding is whether the subject property qualifies for exemption under 35 **ILCS** 205/19.2. In relevant part, that provision exempts from real estate taxation "[a]ll property used exclusively for religious purposes [...] and not leased or used with a view to profit ...[.]"

The controversy arises as follows:

On March 10, 1993, the Department of Revenue (hereinafter the "Department") issued a final administrative decision in Docket Number 90-16-1185. Said decision held the subject property not to be exempt

from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (35 **ILCS** 205/1 et seq).

from 1990 real estate taxes under the then-existing version of Section 205/19.7. (Administrative Notice).

Gift Music Ministries, Incorporated (hereinafter "Gift" or the "applicant") subsequently filed a timely complaint in Administrative Review to the Department's decision. On August 1, 1995, Judge Joanne L. Lanigan of the Circuit Court of Cook County issued a decision in said administrative review (Docket Number 93-L-50314) affirming the final administrative decision. (Administrative Notice).

Applicant did not appeal Judge Lanigan's decision, thus causing it to become final as to the issues decided therein. Nevertheless, on April 8, 1994, applicant sought relief from 1993 real estate taxes by filing an appropriate complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). Applicant Group Ex. No. 8, Doc. B.²

². Applicant Group Ex. No. 8 consists of the following: The Application For Property Tax Exemption, received by Department on June 6, 1994; the Real Estate Exemption Complaint filed with the Cook County Board of (Tax) Appeals on April 8, 1994; a field investigation report; a document from the Property Tax Administration Bureau, Exemption Unit listing the relevant exemption complaint and Permanent Index Numbers; an Affidavit of Use dated May 25, 1994; another Affidavit of Use dated April 8, 1994; a warranty deed dated July 19, 1990; Articles of Amendment to the Articles of Incorporation for "Children on the Way, a Not-For-Profit Corporation" dated March 31, 1982; Articles of Incorporation for "Children on the Way, A Not-For-Profit Corporation," dated February 4, 1977; an Application for Reinstatement for "Children on the Way, a Not-For-Profit Corporation," dated March 26, 1982; Articles of Amendment to the Articles of Incorporation for "Children of the Way, A Not-For-Profit Corporation," dated March 31, 1982; By-laws for Children on the Way; a tax bill; photographs of the subject property; a plat of survey depicting the subject property; a letter, dated May 19, 1983, under the signatures of J. Thomas Johnson, Director of Revenue and Constance W. Beard, Staff Attorney, finding the applicant to be exempt from Use and related sales taxes in the State of Illinois; a certificate, dated December 6, 1991, finding Gift Music Ministries, Inc. to be exempt from Use and related sales taxes in the State of Illinois; A letter, dated August 23, 1997, confirming applicant's exemption from federal

The Board reviewed said application and recommended to the Department that the requested exemption be denied. (Applicant Group Ex. No. 8, Doc. A). On October 27, 1995, the Department accepted this

income tax under unspecified provisions of the Internal Revenue Code; an advertisement on the stationary of Gift Music Ministry; an advertisement describing applicant's ministry; an advertisement describing the items for sale in applicant's thrift shop; a list of purchased items sold at the thrift shop; "pro forma statements of income [for] years ended December 31, 1990 through 1992; and a "End of [the] Year Report" for 1993.

All the aforementioned exhibits are included in the group exhibit. However, each individual document was not separately marked as a component part of same. Thus, in order to clarify any confusion that may result from referring to the group exhibit as an indivisible whole, its documents are hereby renamed as follows: Applicant Group Ex. No. 8, Document (hereinafter "Doc.") A is the Application For Property Tax Exemption; Applicant Group Ex. No. 8, Doc. B is the Real Estate Exemption Complaint; Applicant Group Ex. No. 8, Doc. C is the field investigation report; Applicant Group Ex. No. 8, Doc. D is the document from the Property Tax Administration Bureau, Exemption Unit listing the relevant exemption complaint and Parcel Index Numbers; Applicant Group Ex. No. 8, Doc. E is the Affidavit of Use dated May 25, 1994; Applicant Group Ex. No. 8, Doc. F is the Affidavit of Use dated April 8, 1994; Applicant Group Ex. No. 8 Doc. G is the warranty deed; Applicant Group Ex. No. 8, Doc. H is the Articles of Amendment dated March 31, 1982; Applicant Group Ex. No. 8, Doc. I is the Articles of Incorporation dated February 4, 1977; Applicant Group Ex. No. 8, Doc. J is the Application for Reinstatement dated March 26, 1982; Applicant Group Ex. No. 8, Doc. K is the Articles of Amendment dated March 31, 1982; Applicant Group Ex. No. 8, Doc. L are the By-Laws; Applicant Group Ex. No. 8, Doc. M is the tax bill; Applicant Group Ex. No. 8, Doc. N are the photographs; Applicant Group Ex. No. 8, Doc. O is the plat of survey; Applicant Group Ex. No. 8, Doc. P is the letter dated May 19, 1983, under the signatures of J. Thomas Johnson and Constance W. Beard; Applicant Group Ex. No. 8, Doc. Q is the certificate dated December 6, 1991; Applicant Group Ex. No. 8, Doc. R is the letter confirming applicant's exemption from federal income tax; Applicant Group Ex. No. 8, Doc. S is the advertisement on the stationary of Gift Music Ministry; Applicant Group Ex. No. 8, Doc. T is the advertisement describing applicant's ministry; Applicant Group Ex. No. 8, Doc. U is the advertisement describing the items for sale in applicant's thrift shop; Applicant Group Ex. No. 8, Doc. V is the list of purchased items sold at the thrift shop; Applicant Group Ex. No. 8, Doc. W is the "pro forma statements of income [for] years ended December 31, 1990 through 1992; and Applicant Group Ex. No. 8, Doc. X is the "End of [the] Year Report" for 1993.

recommendation by issuing a certificate finding that "[t]he property is not in exempt use[.]" (Dept. Group Ex. No. 1).

Gift filed a timely appeal to this denial and later presented evidence at a formal evidentiary hearing that took place on October 1, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject property not be exempt from real estate tax for the 1993 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the subject property was not in exempt use during 1993, are established by the admission into evidence of Dept. Ex. No. 1.

2. On March 10, 1993, the Department issued a final administrative decision in Docket Number 90-16-1185. Said decision held the subject property not to be exempt from 1990 real estate taxes under the then-existing version of Section 205/19.7. (Administrative Notice).

3. Applicant subsequently filed a timely complaint in Administrative Review to the Department's decision. On August 1, 1995, Judge Joanne L. Lanigan of the Circuit Court of Cook County issued a decision in said administrative review (Docket Number 93-L-50314) affirming the final administrative decision. (Administrative Notice).

4. Applicant did not appeal Judge Lanigan's decision, thus causing it to become final as to all matters stated therein. (Administrative Notice).

5. The subject property is located at 2501 Chicago Road, Chicago Heights, IL 60411. It is situated on a parcel of land that measures 125 x 28 x 125 x 41. Applicant Group Ex. No. 8, Docs. A.

6. The subject property is improved with a 1 story, stone-frame building that occupies a total of 4,800 square feet. Applicant Group Ex. No. 8, Docs. A and B; Tr. p. 12.

7. Gift acquired ownership of the subject property via a warranty deed dated July 19, 1990. Applicant Group Ex. No. 8; Doc. G.

8. During 1993, applicant used approximately 2,000 feet of the building to operate a store wherein it sold items it obtained through donations, consignment and purchase. Applicant Group Ex. No. 8, Docs. A, V & X.

9. A plat of survey reveals that applicant used a portion of the remaining space for storage of unspecified items. Said plat further discloses that another portion of the building was "not usable" because the roof leaked. Applicant Group Ex. No. 8, Doc. 0.

10. Applicant was originally incorporated under the General Not For Profit Corporation Act of Illinois on February 4, 1977. Its original corporate name was "Children of the Way, a Not-For-Profit-Corporation." However, applicant changed its corporate name to "Gift" by filing Articles of Amendment on March 31, 1982. Applicant Group Ex. No. 8, Docs. I & K.

11. Gift's original Articles of Incorporation indicate that it is organized for the following purposes:

A. To promote Christianity through performing concerts and making musical recordings;

B. To perform all other acts necessary to effectuate the above purposes;

C. To operate in a manner that ensures exempt status under Section 501(c)(3) of the Internal Revenue Code.

Applicant Group Ex. No. 8, Doc. I.

12. The Internal Revenue Service has recognized applicant as being exempt from federal income tax under unspecified provisions of the Internal Revenue Code. Applicant Group Ex. No. 8, Doc. R.

13. The Department has issued two certificates, one dated May 19, 1983, the other December 6, 1991, exempting applicant from Use and related taxes in the state of Illinois. Applicant Group Ex. No. 8, Docs. P & Q.

14. An "End of [the] Year Report" for 1993 reveals that applicant obtained revenue from the following sources during that year:

<u>SOURCE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Sales	\$20,494.75 ³	65% ⁴
Other sources:		
Revenue from weekend performance at St. Julie's	\$ 6,240.00	

20%

³. The \$20,494.00 figure represents applicant's total sales for the entire year. A quarterly breakdown of same reveals the following component figures: \$4,057.30 in sales for the period January 1, 1993 through March 31, 1993; \$6,635.91 in sales for the quarter beginning April 1, 1993 and ending June 30, 1993; \$3,039.85 in sales from July 1, 1993 through September 30, 1993 and \$6,761.69 in same for the period October 1, 1993 through December 31, 1993. Applicant Group Ex. No. 8, Doc. X.

⁴. All percentages shown in this section are approximations derived by dividing the category of income or expense (e.g. sales) by the appropriate total. Thus, for example, \$20,494.75/\$31,544.75 = .6497 (rounded) or approximately 65%.

Revenue from performance at IJP	\$ 2,450.00	8%
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Revenue from performing at miscellaneous weddings, funerals and other "gigs"	\$ 1,450.00	5%
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	<u>SOURCE</u> (Cont'd).	<u>AMOUNT</u>	<u>% OF TOTAL</u>
<1%	Revenue from music lessons	\$ 160.00	
	Cash Donations	\$ 700.00	2%
<1%	IJP (Unspecified)	<u>\$ 50.00</u>	
	Total Revenue	\$31,544.75	

Applicant Group Ex. No. 8, Doc. X.

15. The "End of [the] Year Report" further discloses that applicant's expenses for the same year were as follows:

<u>EXPENSE</u>	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Mortgage Payments and property taxes	\$9,900.00	32%
Property Insurance	\$1,900.00	6%
Vehicle Insurance & Repairs	\$ 450.00	1.5%
Postage & Office Supplies	\$ 2,100.00	7%
New Product (Unspecified)	\$12,000.00	39%
Non Profit Direct Contributions	\$ 400.00	1.3%
Salaries	\$ 00.00	0.0%
Advertising	\$ 700.00	2.3%
Phone	\$ 750.00	2.5%

Security & Monitor	\$ 180.00	<1%
Consignment Payments	\$ 650.00	2.1%
Utilities	<u>\$ 1,450.00</u>	
4.7%		
Total expenses	\$30,480.00	

Id.

16. Applicant purchased the following items, which it later offered for resale, during 1993: religious books, including English and Polish Bibles; unspecified religious figurines and collectibles; unspecified religious music and tapes, both in English and other languages; unspecified ethnic crafts; Polish and Russian icons; unspecified "inspirational plaques[;]" Christian stationary, including wedding invitations; plates and other religious gift items; candles for use by churches; musical instruments for use in churches; "inspiration and religious cards and posters["] ceramic stained glass angels; and unspecified "special orders" out of religious catalogs for churches and individuals. Applicant Group Ex. No. 8, Doc. V.

CONCLUSIONS OF LAW:

An examination of the record establishes that this taxpayer has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exemption from 1993 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not satisfy the requirements for exemption set forth in 35 ILCS 205/19.7 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.* The provisions of that statute which govern disposition of the instant proceeding are found in Section 205/19.7. In relevant part, that provision states that the following are exempt from real estate taxes:

All property of institutions of public charity, all property of beneficent and charitable organizations ... when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit ...[.]

35 ILCS 205/19.7.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Our courts have also consistently held that the use of property to produce income is not an exempt use even though the net income is applied for exempt purposes. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924), (hereinafter "Baldwin"); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

In the Salvation Army case, appellant sought exemption for a thrift store which it operated in Waukegan. Appellant used all of the proceeds from sales made at the thrift store to finance its other charitable ventures, principal among which was its alcohol

rehabilitation program in Waukegan. The court nevertheless held against exemption, finding that any uses associated with financing other charitable endeavors were incidental to the non-exempt use of generating income.

Following the above decision, the General Assembly passed Public Act 86-264, which added the following paragraph to Section 205/19.7:

For purposes of this Section, beginning with the assessment year 1989, it is a charitable or beneficent purpose and not a use with a view to profit when (1) the owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and (2) all the income derived therefrom is used exclusively to support the charitable, religious or beneficent activities of the owner whether or not such activities occur on the premises of such property.

35 **ILCS** 205/19.7.

Judge Lanigan's decision, of which I take administrative notice, contains the following interpretation of Public Act 86-264:

The requirements of the statute are clear and are two in number. The charitable owner must use the property exclusively for the distribution, sale or resale of donated goods and related activities and the income derived from the activities must be used exclusively to support the charitable activities of the owner. For the tax exemption to apply, both requirements must be met.

The Administrative Law Judge found that the first test was not met because [applicant] resold items which it had purchased and took items on consignment. The Court agrees. Moreover, this

Court in applying the statute to the facts, finds that the [applicant] did not meet either of the requirements for exemption under 35 **ILCS** 205/19.7. Taking goods on consignment and sharing the income derived from such sales destroyed the exclusivity element required in both parts of the exemption. As to test two, the [applicant] did not retain all the income it derived from the activities of the thrift store because 80% of the sale price on consigned items was returned to the consignor. It is evident that while this income was derived from the sales at the store, it was not applied to the owner's charitable activities.

Gift Music Industries v. Department of Revenue, 93 L 50314 (Circuit Court of Cook County, August 1, 1995) at pp. 4 - 6.

It may be axiomatic that "a determination of exempt or taxable status for one year is not res judicata for any other tax year even where ownership and use remain the same." Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981). However, the equally well-settled doctrine of *stare decisis* mandates that similarly situated cases be adjudicated according to uniformly applied legal principles.

The List of Purchased Items Sold at Applicant's Thrift Shop (Applicant Group Ex. No. 8, Doc. V) establishes that this case is similarly situated to its predecessor in that applicant offered purchased (rather than donated) goods for resale during 1993. Moreover, while the present record does not establish the precise percentage that applicant paid to its consignors, the "End of [the] Year Report" (Applicant Group Ex. No. 8, Doc. X) clearly indicates that applicant made \$650.00 in consignment payments during the tax year in question. Based on these factual similarities, I conclude that the above-quoted excerpts from Judge Lanigan's opinion provide

incisive reasoning, and therefore controlling authority, as to why applicant's thrift shop is not entitled to exemption from 1993 real estate taxes under the relevant portion of Section 205/19.7.

With respect to the remainder of the building, I note that our courts have held storage areas to be exempt where applicant proves they are "reasonably necessary" to further an exempt purpose. See, Evangelical Hospitals Corporation v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). This principle does not apply in the present case because the thrift store itself is not exempt. Therefore, any areas used in connection therewith are likewise non-exempt.

The plat of survey (Applicant Group Ex. No. 8, Doc. 0) also indicates that applicant did not use another portion of the building due to a leaky roof. This circumstance, although unfortunate, does not alter applicant's burden of proof. Nor does it alleviate the need for affirmative evidence of actual, exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Based on this and all the above-stated reasons, I conclude that the entire subject property fails to satisfy the actual and exclusive use requirements established in Section 205/19.7. Therefore, the Department's determination as to lack of such use should be affirmed.

Applicant also seeks exemption under Section 205/19.2 of the Revenue Act. This provision, by its plain language, exempts from real estate "[a]ll property *used* exclusively for religious purposes ... [.]" [emphasis added]. However, The advertisements and other literature submitted as Applicant's Group Ex. No. 8, Docs. S and T,

coupled with the testimony of applicant's sole witness, Joseph T. Schulte, establish that most (if not all) of applicant's concerts and other performances of religious music took place away from the subject property. (See, Tr. pp. 9, 21-24, 38-39, 45-47). As such, said property *itself* was not *actually*⁵ used for "religious purposes"⁶ in the relevant tax year. Therefore, the Department's determination that it was not in exempt use during 1993 should be affirmed.

⁵. For further analysis of the actual use requirement, see, Skil Corporation v. Korzen, supra; Comprehensive Training and Development Corporation v. County of Jackson, supra.

⁶. Illinois courts have long ascribed to the following definition of "religious use" when analyzing claims under Section 201/19.2 and its predecessors:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

This definition is relevant to the present case only because applicant's organizational documents and Christian musical ministry activities establish that it is a "religious organization." However, the statements contained in these documents do not establish the requisite actual, exempt use. Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987).

This same reasoning defeats any arguments claiming that applicant's exemptions from federal income, Illinois Use and other related taxes are dispositive of the present matter. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). For these reasons, and because use is the determinative test under Section 205/19.2, (See, People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922)' American National Bank and Trust Company v. Department of Revenue, 242 Ill. App.3d 716 (2nd Dist. 1993)), I conclude that applicant does not qualify for exemption thereunder.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Number 32-29-233-001 not be exempt from 1993 real estate taxes.

Date

Alan I. Marcus,
Administrative Law Judge